

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CRIMINAL ACTION NO. 10-10180-RGS

UNITED STATES OF AMERICA

v.

EARL KAREEM RICKER

ORDER ON PETITIONER'S MOTION
TO RESTORE THE RIGHT TO APPEAL

November 23, 2011

STEARNS, D.J.

Petitioner Earl Kareem Ricker, proceeding *pro se*, brings this motion to reinstate his right of appeal. After pleading guilty to the distribution of cocaine base, Ricker was sentenced to a below-Guidelines sentence of 84 months. Judgment entered on May 12, 2011. Ricker, who was advised at the sentencing hearing of his right of appeal and, if necessary, his right to the assistance of the Clerk in filing an appeal, did not appeal either his conviction or sentence. On September 26, 2011, Ricker moved to restore his right of appeal, acknowledging that the fourteen days allotted by Fed. R. App. P. 4(b)(1)(A) for the filing of a notice of appeal had long expired. The motion is *DENIED*. The premise on which Ricker intends to base an appeal, that the sentence imposed “was a breach of my plea agreement,” is faulty. There was no written plea agreement in the case. As the unobjected-to Presentence Report makes clear, the government at the time of the plea agreed orally to withdraw the information it had filed pursuant to 21 U.S.C. § 851(a)(1) at the time of

sentencing and to recommend a sentence not to exceed 120 months. The government abided by each of these undertakings at sentencing as reflected in the sentence actually imposed. As Ricker has identified no other ground for an appeal, the restoration of the right of appeal would be futile.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE